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Climate Change Litigation in Comparative Perspective: Evaluating Judicial Approaches in Nigeria, Kenya, and the United Kingdom

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Abstract

This article undertakes a comparative analysis of judicial approaches to climate change litigation in Nigeria, Kenya, and the United Kingdom, three jurisdictions shaped by common law traditions but characterised by differing constitutional frameworks, institutional capacities, and levels of climate policy development. Employing a doctrinal methodology, the study examines relevant case law, statutory regimes, and policy instruments to assess how courts in each jurisdiction have engaged with climate-related claims, particularly those seeking mitigation, adaptation, and procedural accountability. The findings reveal important contrasts. In Kenya, constitutional recognition of the right to a clean and healthy environment, coupled with relatively permissive standing rules, has enabled courts to engage more openly with environmental and climate-related claims, although judicial intervention has often focused on procedural compliance rather than substantive emissions control. In the United Kingdom, the existence of comprehensive climate legislation, most notably the Climate Change Act 2008, has provided a structured basis for litigation, with courts playing a supervisory role through judicial review by assessing the legality, rationality, and transparency of governmental climate strategies, while generally exercising restraint in relation to policy merits. Nigeria's climate litigation landscape remains comparatively underdeveloped, constrained by procedural barriers, limited climate-specific legislation, and enforcement challenges; however, courts have increasingly addressed climate-relevant harms indirectly through environmental law and human rights-based claims, suggesting an evolving but cautious judicial engagement. By comparing these jurisdictions, the article identifies both shared challenges, such as causation, justiciability, and judicial deference, and divergent pathways through which climate litigation contributes to climate governance.

Keywords

Climate change litigation; Judicial approach; Comparative analysis; Mitigation; Adaptation

Introduction

Climate change has emerged as one of the most pressing global challenges, with profound implications for environmental sustainability, public health, and socio-economic development. In response, climate change litigation has become an increasingly important tool for holding governments and corporations accountable for their contributions to climate harms or their failure to fulfil mitigation and adaptation obligations. In Africa, where climate impacts are particularly acute, manifesting in sea-level rise, desertification, food insecurity, and population displacement, litigation is gradually gaining traction as a mechanism for enforcing environmental rights and influencing climate governance.

Against this backdrop, this article undertakes a comparative examination of climate change litigation in Nigeria, Kenya, and the United Kingdom. It explores how courts in these jurisdictions have interpreted and applied constitutional provisions, statutory frameworks, and international climate obligations in adjudicating climate-related claims. The analysis further interrogates the extent to which judicial approaches, legal reasoning, and remedies converge or diverge across the three jurisdictions, reflecting differences in constitutional design, institutional capacity, and judicial philosophy. Finally, the article assesses the contribution of climate change litigation in Nigeria and Kenya to the protection of environmental rights and the development of climate governance, while drawing lessons from the more developed jurisprudence of the United Kingdom for strengthening judicial engagement with climate accountability in African contexts.

Through this research, it is expected that solutions will be brought to address the issues that will be discovered by the comparative analysis.

Methodology

This study adopts a qualitative, doctrinal, and comparative research methodology to examine climate change litigation in Kenya, and United Kingdom, and Nigeria. The research is primarily doctrinal, involving a systematic analysis of legal texts, including constitutions of these jurisdictions, statutes, regulations, case law, and relevant judicial decisions. This approach enables a detailed understanding of the legal frameworks, the scope of environmental rights, and judicial interpretations that underpin climate change litigation in the three jurisdictions.

A comparative method is employed to identify similarities and differences in the legal systems, institutional capacities, and approaches to climate governance. This involves examining how courts in Kenya, the UK, and Nigeria interpret constitutional and statutory provisions related to environmental protection, the role of civil society in initiating litigation, and the effectiveness of litigation as a tool for advancing climate justice. Secondary sources such as academic articles, reports from international and local environmental organisations, and commentaries on climate litigation are also analysed to provide context and support critical evaluation of judicial and legislative practices. The combination of doctrinal and comparative analysis allows the study to draw lessons and best practices from each jurisdiction, offering insights into how legal strategies can

be optimised to strengthen climate governance and enforce environmental rights in Nigeria and beyond.

Climate litigation in Kenya and Nigeria

Among African countries, Kenya and Nigeria present contrasting yet instructive examples of how climate change litigation is developing within diverse legal, political, and socio-economic frameworks. Kenya is recognised for its progressive environmental jurisprudence, supported by a transformative constitution that explicitly secures the right to a clean and healthy environment. The creation of specialised environmental courts and active civil society involvement have helped shape a dynamic climate litigation scene in the country. Key rulings, such as those revoking approval for coal projects due to inadequate environmental assessments like Save Lamu & 5 others v NEMA & Others (2019) and Mui Coal Basin Local Community & 15 others v PS Ministry of Energy & 17 others (2015), highlight Kenya's dedication to environmental justice and constitutional rights.

In contrast, Nigeria's climate litigation framework is still relatively new but developing rapidly. Although the Nigerian Constitution does not explicitly guarantee environmental rights, recent legislative progress, such as the Climate Change Act of 2021 and evolving judicial interpretations in cases like the *Centre for Oil Pollution Watch v NNPC,* have started to create new avenues for legal action on environmental and climate issues. Historically focused on cases involving oil pollution and gas flaring in the Niger Delta, Nigeria's environmental litigation is now gradually broadening to include wider climate concerns, with courts increasingly recognising the standing of civil society organisations and the implicit environmental aspects of fundamental rights.

This comparative analysis examines the key similarities and differences in climate change litigation between Kenya and Nigeria by analysing their respective legal frameworks, judicial approaches, civil society participation, and the overall effectiveness of litigation as a tool of climate governance. Beyond their shared common law heritage, the two jurisdictions diverge markedly in the scope of constitutional environmental rights, levels of judicial engagement, institutional capacity, and climate governance frameworks. These differences illuminate how distinct legal and socio-political contexts shape the development, reach, and effectiveness of climate change litigation, while also providing insights into how strategic legal approaches may be leveraged to advance climate justice in Nigeria and comparable jurisdictions. From the foregoing, Kenya and Nigeria are chosen as the focus of this study because, despite their shared common law heritage, they exhibit distinct constitutional, judicial, and institutional approaches to environmental protection and climate change litigation, allowing for a meaningful comparison that reveals how differing legal and socio-political contexts influence the effectiveness of litigation as a tool for advancing climate justice.

Legal Framework for Climate Change Litigation in Kenya

The legal framework governing climate change in Kenya encompasses both international and domestic law (Omuko-Jung, 2021).

Constitutional Provisions for Climate Change Litigation: The Justiciability of Environmental Rights

The Constitution serves as the foundation of Kenya's legal system and establishes the legal basis for addressing and litigating climate change issues in Kenya. The Constitution treats environmental management as a matter of national significance. The preamble of a constitution establishes the broader context for its adoption and serves as a guiding framework for its interpretation and application. The preamble highlights the significance of the environment, affirming that, in adopting the Constitution, the people of Kenya pledge to respect the environment as part of their heritage and to preserve it for the well-being of future generations.[1]

The Constitution also firmly establishes the right to a clean and healthy environment as a fundamental human right guaranteed to all Kenyans. It provides,

"Every person has the right to a clean and healthy environment, which includes the right to: (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in (Article 69); and (b) to have obligations relating to the environment fulfilled under (Article 70)".

By embedding this right within the Bill of Rights, it ensures that individuals can approach the courts to address climate change-related concerns. This means that anyone can initiate legal action because climate change affects this right, whether the harm is to their own environment or that of another person, just as they would with any other constitutional right (Odote, 2018). Kenya's Constitution of 2010 is widely regarded as one of the most progressive in Africa in its treatment of environmental protection. Article 42 expressly guarantees every person the right to a clean and healthy environment, which includes the obligation to have that environment protected for the benefit of both present and future generations[2]. Importantly, this right is fully justiciable.

Article 70 of the Constitution provides an innovative procedural mechanism for the enforcement of this right. It provides that, if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being, or is likely to be denied, violated, infringed, or threatened, the person may apply to a court for redress in addition to any other legal remedies available in respect of the same matter. On application under clause (1), the Court may make any order or give any directions it considers appropriate.

(a) to prevent, stop, or discontinue any act or omission that is harmful to the environment;

(b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or

(c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.

[1] Art 10; Constitution of Kenya, 20

[2] Article 42 Constitution of Kenya, 2010

> (3) For this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.

It permits any person, without the need to demonstrate personal injury, to institute legal proceedings alleging a violation, infringement, or threat to the right to a clean and healthy environment. The constitutional waiver of standing requirements has significantly lowered the threshold for accessing environmental justice.[3] These provisions have facilitated the growth of strategic environmental litigation. In *Mohamed Ali Baadi and Others v The Attorney General and Other* 2018) eKLR, Petition No 22 of 2012 HC, Nairobi, 30 April 2018, the High Court of Kenya invoked Article 42 to assess the legality of the Lamu Port development, ultimately underscoring the state's obligation to uphold environmental and community rights. The case demonstrated how the constitutional framework can serve as both a shield for affected communities and a sword against unsustainable development. Moreover, the environmental right in Article 42 is embedded within a broader constitutional architecture that prioritises sustainability, equity, and public participation. The preamble of the Constitution commits the people of Kenya to be 'respectful of the environment, which is our heritage, and determined to sustain it for the benefit of future generations', while Article 10 enshrines sustainable development and environmental protection as national values and principles of governance.[4]

In contrast, Nigeria's 1999 Constitution (as amended) does not contain an express, justiciable right to a clean and healthy environment. Environmental protection is referenced in section 20, which imposes a duty on the state to 'protect and improve the environment' and 'safeguard the water, air and land… for present and future generations. However, Section 20 resides within Chapter II of the Constitution, the Fundamental Objectives and Directive Principles of State Policy, which is rendered non-justiciable by Section 6(6)(c). The limitations imposed by section 6(6)(c) continue to present a significant hurdle for litigants seeking climate or environmental relief based solely on constitutional principles. The divergence in constitutional design between Kenya and Nigeria has profound implications for climate change litigation. Kenya's framework provides both substantive environmental rights and procedural guarantees**,** enabling courts to act as active protectors of environmental interests. The availability of a direct, enforceable constitutional right, coupled with broad standing provisions, has allowed Kenyan courts to develop a growing body of climate-related jurisprudence that integrates domestic and international legal principles (Ebeku, 2007, p312-320).

Nigeria, in contrast, offers only aspirational or implied environmental rights**,** with no clear pathway for constitutional enforcement. As a result, litigants must rely on derivative interpretations of civil and political rights or on statutory avenues, which may be procedurally or substantively insufficient for addressing the systemic risks posed by climate change. Kenya's model better aligns with global environmental constitutionalism trends, incorporating principles such as intergenerational equity, sustainability, and public participation. Nigeria's constitutional silence on justiciable environmental rights continues to hinder the development of a robust climate litigation culture, despite recent statutory reforms such as the Climate Change Act (2021).

[3] Constitution of Kenya, 2010
[4] Art 10; Constitution of Kenya, 2010

Kenya's constitutional framework offers a model of proactive and participatory environmental governance. Its clear recognition of environmental rights has facilitated the emergence of climate litigation as a viable tool for accountability (Constitution of Kenya). Scholars have noted that Kenya's 2010 Constitution introduced transformative environmental provisions that support judicial innovation in environmental protection (Kameri-Mbote, 2005). Nigeria, although not without judicial creativity, remains hampered by the structural limitations of its Constitution. This has been illustrated in the case of *Gbemre v Shell Petroleum Development Company Nigeria Ltd & Others*, 2005 (Ajomo and Adewale, 1994).

Building on this point, climate and environmental litigation in Nigeria continues to face significant doctrinal and practical constraints. The non-justiciability of the environmental objectives contained in Chapter II of the 1999 Constitution remains a central procedural obstacle, as courts have repeatedly declined to grant relief on the ground that these provisions are unenforceable directive principles. This restrictive approach was clearly articulated in *Archbishop Okogie v Attorney-General of Lagos State* (1981), where the court held that the provisions of Chapter II are not justiciable unless expressly made enforceable by legislation. Although this case did not concern climate change directly, it has had enduring implications for environmental litigation, limiting the ability of courts to entertain claims grounded solely in constitutional environmental objectives (Fagbohun, 2010).

Climate-Specific Legislation - Climate Change Act 2016

Climate change legislation plays a critical role in framing the legal and institutional mechanisms through which climate obligations are implemented and contested. Both Kenya and Nigeria have enacted climate-specific legislation, i.e., Kenya's Climate Change Act (2016) and Nigeria's Climate Change Act (2021), in response to mounting international, regional, and domestic pressure to mainstream climate governance. However, the two statutes differ significantly in their approach to justiciability, public participation, institutional structure, and the scope for litigation. Kenya's Climate Change Act of 2016, along with the 2024 Carbon Market Regulations, provides a legal framework for addressing climate change and offers avenues for climate change litigation. It expressly affirms the legal standing of individuals and groups seeking to hold public or private actors accountable for climate harm. Section 23 provides that "any person" may apply to the Environment and Land Court for redress where there is a violation or threatened violation of a right relating to climate change. (Climate Change Act 2016, Kenya) This broad locus standi provision echoes the constitutional approach under Article 70, reinforcing a robust framework for rights-based climate litigation.

In contrast, the Nigerian Climate Change Act, 2021, does not contain an explicit provision granting standing for climate-related litigation. While it establishes climate obligations and institutional duties, it does not provide mechanisms through which individuals or civil society groups can directly seek judicial redress for non-compliance with these obligations. So far, Nigeria's Climate Change Act 2021 has not yet been directly invoked in any reported court decision as the primary legal basis for claims, and there are no documented cases in which courts have applied the Act itself in litigation outcomes. Nigeria still has very a few climate change–specific litigation cases overall,

with only two climate-related cases recorded over the last two decades, none of which turned on the 2021 Act. This omission reflects the broader limitations of Nigeria's constitutional and environmental litigation framework and restricts the transformative potential of the Act in enabling climate accountability through the courts.

Scholars and practitioners note that while the Act provides a statutory basis for litigation by placing obligations on government bodies, corporate actors, and regulatory agencies, such as reducing emissions, adopting climate action plans, and imposing climate desks within MDAs, these provisions have mainly been discussed as potential tools for future claims rather than litigated grounds to date.

Institutional Framework and Enforcement Under the Climate Change Act

Kenya's Climate Change Act establishes the National Climate Change Council (NCCC), chaired by the President, with representation from civil society and the private sector (Adekoya and Fagbohun, 2022, p 45-62). This inclusive composition enhances transparency and responsiveness. The Council is tasked with overseeing climate policy implementation, monitoring progress, and advising on climate finance. Importantly, decisions and actions of the Council and other implementing bodies can be subjected to judicial review under Kenyan administrative law sections 22, 23, and 70[5]. This creates clear institutional targets for climate litigation. Nigeria's Climate Change Act establishes a similar National Council on Climate Change, but vests it with more centralized executive control and limited civic oversight (Climate Change Act (Nigeria), 2021) While the Council is empowered to develop a carbon budget and climate targets, the lack of enforceable obligations or judicial review provisions undermines the capacity of affected parties to seek redress for non-compliance with these targets. As a result, enforcement relies heavily on political will, rather than judicial or citizen-driven action.

Rights Integration and Obligations Under the Climate Change Act

Kenya's Climate Change Act links climate responsibilities to constitutional environmental rights. The Climate Change Act (2016) explicitly recognises the judiciary's role in enforcing climate-related rights and obligations. It authorises individuals, under Article 70 of the Kenyan Constitution, to initiate proceedings before the Environment and Land Court where there are allegations that another party has engaged in conduct that adversely affects, or is likely to affect, climate change mitigation or adaptation efforts. In such cases, the court is empowered to issue remedies, including prohibiting or halting environmentally harmful actions or omissions; directing public officials to take appropriate preventive or corrective action; or awarding compensation to victims of breaches of climate-related duties. The Act obliges public bodies to integrate climate change considerations into decision-making processes, subject to environmental safeguards (Climate Change Act, 2016). It further enables public participation in climate planning, reinforcing procedural rights central to environmental justice by ensuring that each level of government undertakes public awareness processes and ensures that the public has been consulted in all strategy development, laws, and policies, especially relating to climate change.

[5] Constitution of Kenya, 2010

In contrast to Kenya's Climate Change Act, Nigeria's Climate Change Act, 2021, adopts a policy-centric approach that prioritises institutional coordination, emissions accounting, and national planning frameworks over the establishment of enforceable rights. While the Act makes reference to principles such as sustainable development and intergenerational equity, these are articulated as aspirational policy objectives rather than actionable legal rights. The legislation focuses heavily on the responsibilities of the newly established National Council on Climate Change and other government entities, but does not provide explicit provisions for individual or civil society standing, judicial oversight, or mechanisms through which climate-related obligations may be enforced through litigation.

This omission creates a significant accountability gap. Unlike Kenya's Climate Change Act, which provides access to the Environment and Land Court for individuals alleging violations of climate obligations under Article 70 of the Constitution, Nigeria's framework fails to establish a corresponding avenue for redress. As a result, litigants seeking to pursue climate justice in Nigeria must rely on general environmental legislation, such as the African Charter on Human and Peoples' Rights, which has been domesticated through the African Charter (Ratification and Enforcement) Act (Cap A9 LFN 2004). The reliance on these alternative legal avenues reflects both the constitutional limitations of Nigeria's environmental governance system and the absence of a rights-based foundation within the Climate Change Act itself. This not only restricts the transformative potential of the Act but also renders climate litigation in Nigeria more complex, requiring strategic reliance on external or implied legal sources to construct enforceable claims.

Potential for Strategic Litigation

Kenya's Climate Change Act enhances the space for strategic climate litigation by providing a statutory basis to challenge both governmental and corporate actors on climate obligations. Recent cases, such as *Save Lamu & 5 Others v NEMA & Another* (2019) eKLR, have demonstrated the courts' willingness to scrutinize development projects in light of climate and environmental considerations. In Nigeria, litigation strategies must circumvent the statutory silence of the Climate Change Act by relying on common law, human rights instruments, or environmental regulations under the NESREA Act. (Ebeku, 2007) Although there is growing judicial awareness of environmental harms, the statutory architecture remains ill-equipped to support direct climate litigation.

In summary, Kenya's Climate Change Act provides a more litigation-friendly framework by explicitly recognising legal standing, integrating constitutional rights, and establishing transparent, reviewable institutions. Nigeria's Climate Change Act, while commendable in ambition, remains limited regarding enforceability and justiciability. For Nigeria to fully unlock the potential of climate litigation as a tool for accountability, future reforms should include explicit rights protections, expand standing provisions, and enable judicial review of climate-related actions. Environmental Management and Coordination Act (EMCA, Kenya) and National Environmental Standards and Regulations Enforcement Agency (NESREA Act, Nigeria) in Relation to Climate Change Litigation. In both Kenya and Nigeria, foundational environmental legislation, EMCA (Kenya) and the NESREA Act (Nigeria), interact differently with the statutory

climate change frameworks enacted in recent years. This section evaluates how these environmental laws enable or constrain climate litigation in the two jurisdictions.

Legal Foundation and Normative Scope

Kenya's EMCA (as revised in 2015) provides a comprehensive framework for environmental management, explicitly recognising the precautionary principle, sustainable development, and intergenerational equity. These principles are crucial in climate litigation, where harms are often anticipatory and diffuse. Section 3 of EMCA guarantees every person the right to a clean and healthy environment and establishes standing to enforce this right, paving the way for litigation grounded in both statute and constitutional rights (Kameri-Mbote and Kabira, 2019). On the other hand, Nigeria's NESREA Act is focused primarily on compliance and enforcement of environmental standards. It lacks direct provisions that support individual access to justice or public interest litigation in climate-related matters. NESREA's mandate is largely administrative and regulatory, not judicial. Consequently, it does not integrate the normative principles, such as precaution or environmental justice, that courts can rely on to adjudicate climate disputes (Etemire, 2016).

Institutional Coordination with Climate Change Acts

In Kenya, the EMCA works in tandem with the Climate Change Act 2016, which is the first climate-specific statute in Africa. The Climate Change Act recognises climate obligations under both domestic and international law and establishes institutions like the National Climate Change Council. NEMA, created under EMCA, plays an implementation and oversight role, ensuring environmental considerations (including climate risks) are integrated into development decisions and EIAs (Republic of Kenya, 2016). Courts have recognised these links in climate-related rulings, reinforcing the binding nature of Kenya's climate obligations (Muigua, 2023).

In Nigeria, the NESREA Act is not substantively aligned with the Climate Change Act 2021. NESREA does not participate in the National Council on Climate Change, which is tasked with overseeing climate governance. The Climate Change Act focuses heavily on policy planning and emissions accounting, with weak judicial or public enforcement mechanisms (Federal Republic of Nigeria, 2021). This institutional disconnect inhibits coordinated litigation and the invocation of climate obligations in court, especially when NESREA's enforcement actions are limited to sectoral regulations (Ajayi, 2022).

Facilitation of Climate Change Litigation

Kenya's EMCA and Climate Change Act, supported by Article 70 of the Constitution, facilitate strategic climate litigation. Litigants can challenge projects or government inaction based on statutory or constitutional environmental obligations. Cases such as *Save Lamu & Others v NEMA & Another* have shown the courts' willingness to annul environmental approvals due to inadequate climate impact assessments (Muigua, 2023). EMCA's clear enforcement provisions, including restoration orders and public participation rights, have been key enablers. Nigeria's NESREA Act does not directly support climate litigation. It does not establish enforceable environmental rights or

public standing. While the NESREA agency may initiate enforcement proceedings, it does not provide avenues for civil society or individuals to seek judicial redress. Consequently, Nigerian litigants often rely on the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, particularly Article 24 on environmental rights, as seen in *Centre for Oil Pollution Watch v NNPC* (Afripoli, 2025). However, these are workarounds rather than direct legal pathways supported by NESREA or the Climate Change Act.

The Relevance of International Law in Climate Litigation in Kenya

The intersection between international environmental law and domestic legal systems plays a crucial role in shaping the trajectory of climate change litigation. For Kenya, international law has both normative and practical significance in environmental and climate-related adjudication. The country's legal framework expressly incorporates international law into its domestic legal order, enabling litigants and courts to invoke international climate norms in both constitutional and statutory litigation.

Incorporation of International Law into Domestic Law

Articles 2(5) and 2(6) of the Constitution of Kenya (2010) lay the foundation for the relevance of international law in domestic adjudication. Article 2(5) stipulates that the general rules of international law form part of the law of Kenya, while Article 2(6) provides that any treaty or convention ratified by Kenya shall form part of Kenyan law[6]. These provisions eliminate the need for legislative domestication, a requirement in many dualist systems, and create a monist orientation that gives immediate legal effect to ratified international treaties. Consequently, Kenya's international obligations under treaties such as the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and other multilateral environmental agreements (MEAs) are directly applicable and can be invoked before domestic courts (Muigua, 2023).

Kenyan courts have demonstrated a growing willingness to rely on international law as a source of legal authority in climate and environmental litigation. In *Mohamed Ali Baadi and Others v Attorney General and Others*, the Environment and Land Court relied not only on domestic constitutional rights but also referred to international instruments such as the Rio Declaration and the African Charter on Human and Peoples' Rights in assessing the state's compliance with environmental obligations (Ite *et al*., 2016).

Similarly, in *Save Lamu & 5 Others v National Environmental Management Authority (NEMA) & Another* (2019), which concerned the approval of a coal-fired power plant, the tribunal emphasized the relevance of Kenya's international climate commitments, particularly under the Paris Agreement, in assessing whether the project complied with sustainable development standards. These cases illustrate the use of international law as a normative framework that informs judicial interpretation of domestic environmental principles. The principle of sustainable development, widely recognized in international environmental law, has been explicitly adopted within Kenya's domestic legal regime. Article 10 of the Constitution recognizes sustainable development as a national value,

[6] Constitution of Kenya 2010

and the Environment and Land Court has consistently interpreted this principle in light of international legal instruments (Muigua and Kariuki, 2019).

For instance, courts have drawn from international jurisprudence and guidelines such as Principle 10 of the Rio Declaration, which emphasises public participation and access to environmental information to enrich the meaning of constitutional rights such as the right to a clean and healthy environment (UNECA, 2020). This dynamic interaction between international law and national law expands the scope of legal arguments available to litigants and reinforces Kenya's alignment with global environmental norms. Apart from binding treaties, Kenyan courts have also referenced soft law instruments in guiding their decision-making. These include declarations, guidelines, and judicial principles developed by international and regional bodies. Though non-binding, such instruments are often cited to affirm the state's duty of care in environmental governance (Okoth-ogendo and Opinya, 2014).

An example is the use of the Guidelines on the Implementation of the Right to a Healthy Environment in Africa issued by the African Commission on Human and Peoples' Rights. In interpreting state obligations, Kenyan courts have acknowledged such guidelines as persuasive authority, especially where domestic legislation is ambiguous or silent[7] (Okoth-Ogendo, 2014). Despite this progressive framework, the practical integration of international law in climate litigation faces several constraints. These include judicial capacity, limited public awareness of international environmental rights, and a lack of consistent enforcement mechanisms. Furthermore, while ratified treaties are formally part of domestic law, the absence of comprehensive implementing legislation sometimes limits their operationalisation (Kaniaru, 2014). Nevertheless, these challenges do not diminish the transformative potential of international law in Kenya's environmental jurisprudence. The growing jurisprudence affirms that international law is not only relevant but indispensable to the development of climate change litigation in Kenya.

International law is deeply embedded in Kenya's climate litigation landscape. Through constitutional incorporation, reference to treaties, and adoption of soft law norms, Kenyan courts have shown a readiness to use international legal standards to expand environmental rights and hold both public and private actors accountable. As climate litigation continues to evolve, international law will remain a vital tool for advancing environmental justice and fulfilling Kenya's obligations to present and future generations.

The Relevance of International Law in Climate Litigation in Nigeria

In the context of Nigeria, international law plays a complex but increasingly significant role in environmental and climate litigation. Although Nigeria adheres to a dualist legal tradition requiring ratified treaties to be domesticated before they acquire the force of law, judicial interpretations and recent statutory developments have begun to reflect a growing openness to integrating international legal principles into domestic adjudication. The relevance of international law to climate litigation in Nigeria, therefore, lies in its capacity to influence judicial reasoning, complement statutory

[7] African Charter of Human and Peoples Rights (1981)

obligations, and reinforce constitutional rights within an evolving legal framework. Under Nigeria's dualist legal system, treaties must be enacted into law by the National Assembly to have a binding domestic effect. This principle is codified in the Constitution of the Federal Republic of Nigeria (1999), which provides that "no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly" (Constitution of the Federal Republic of Nigeria, 1999). As such, treaties like the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, although ratified by Nigeria, are not automatically enforceable in domestic courts unless specifically enacted.

Nevertheless, Nigerian courts have at times referenced international instruments as interpretative guides, even without domestication, especially when such instruments support or bolster existing constitutional or statutory rights. In *Abacha v Fawehinmi*, the Supreme Court held that ratified treaties could be utilized to interpret constitutional provisions, provided they do not conflict with domestic legislation. Although the application of international law in Nigerian environmental litigation remains limited, there have been notable instances where international instruments have informed judicial reasoning. In *Gbemre v Shell Petroleum Development Company* (2005) AHRLR 151 (NgHC). The Federal High Court invoked Nigeria's obligations under the African Charter on Human and Peoples' Rights, domesticated through the African Charter Act, to strengthen the recognition of environmental rights under the right to life and dignity.

The jurisprudence emerging from Nigeria's oil sector, particularly landmark cases such as *Gbemre v Shell Petroleum Development Company* (2005), has had a formative influence on climate litigation by establishing key doctrinal principles around environmental rights, corporate liability, and state responsibility. In *Gbemre*, the court recognised the right to a healthy environment as enforceable, holding both the government and the oil company accountable for gas flaring and environmental degradation in the Niger Delta. This case effectively acted as a doctrinal transplant: principles originally applied to localized oil-sector harms, such as the recognition of tortious and constitutional remedies for environmental damage, standing for affected communities, and the obligation of both state and corporate actors to prevent environmental harm, have been invoked, at least conceptually, in subsequent climate-related claims.

However, the limits of this transplant are evident. Oil-sector litigation typically involves identifiable plaintiffs, discrete sites of harm, and well-documented corporate actors, whereas climate litigation often deals with diffuse, cumulative, and cross-jurisdictional impacts. Courts have therefore been reluctant to extend *Gbemre*-style remedies to climate claims, particularly where the causal chain is global and the harm is abstract or probabilistic. Moreover, enforcement challenges, such as monitoring compliance and securing reparations, are magnified in climate cases, exposing a gap between the doctrinal promise of oil-sector precedents and their practical applicability to broader climate litigation. Nonetheless, the *Gbemre* framework provides a critical starting point, demonstrating that Nigerian courts can, in principle, hold both state and private actors accountable for environmental harm, a principle that climate advocates continue to leverage in shaping strategic litigation.

The African Charter, which Nigeria has domesticated, is particularly significant because it recognises the right to a generally satisfactory environment under Article 24. Since the Charter forms part of Nigerian law, its provisions are directly enforceable and have become a vital bridge between international environmental standards and domestic litigation (Ogbodo, 2009). In the case of *Centre for Oil Pollution Watch v NNPC* (Sönnichson, 2023), the Supreme Court of Nigeria indirectly acknowledged the normative influence of international environmental standards, though it ultimately resolved the matter based on statutory obligations under the Environmental Impact Assessment Act. Nevertheless, the court's increasing reference to international norms signals a slow shift toward greater legal openness to global environmental principles. A major step forward in aligning Nigeria's domestic law with its international obligations came with the enactment of the Climate Change Act 2021. The Act provides a statutory framework for addressing climate change and implementing Nigeria's obligations under the Paris Agreement. It mandates the formulation of carbon budgets, institutionalises the National Council on Climate Change, and requires ministries, departments, and agencies (MDAs) to develop climate-related action plans.[8]

The Act expressly acknowledges the importance of international climate treaties and includes provisions that facilitate Nigeria's participation in global climate governance (Nwafor and Okonkwo, 2022). Although judicial engagement with the Act is still nascent, its provisions are expected to provide litigants with a direct legal basis for holding the state accountable for failing to implement climate obligations under international law. Beyond binding treaties, Nigerian courts and policymakers have shown occasional deference to soft law instruments and international best practices. These include the Rio Declaration, the United Nations Guiding Principles on Business and Human Rights, and decisions of international human rights bodies. Although not binding, such instruments are often used to support arguments on due diligence, precaution, and intergenerational equity. For instance, Principle 10 of the Rio Declaration emphasising access to information, public participation, and justice in environmental matters has been cited in advocacy and litigation aimed at improving environmental governance in Nigeria's extractive sectors (UNECA, 2020). Civil society organisations have used these principles to demand transparency and inclusion in climate policy processes, which could eventually translate into justiciable claims.

Despite these developments, significant challenges hinder the effective use of international law in Nigerian climate litigation. These include the lack of domestication of key treaties, limited judicial capacity in environmental jurisprudence, and weak institutional enforcement mechanisms. Moreover, courts remain conservative in interpreting international law, often defaulting to statutory law even when international obligations provide a stronger normative framework (Akindele and Chabinga, 2024). Additionally, political inertia and regulatory fragmentation have stifled the implementation of Nigeria's international environmental commitments. This has led to concerns that climate litigation may remain largely symbolic without stronger judicial enforcement of international legal principles. While Nigeria's dualist constitutional structure limits the direct enforceability of international treaties in climate litigation, international law remains a vital normative and interpretive tool. The domestication of

[8] Climate Change Act (2021)

the African Charter and the enactment of the Climate Change Act (2021) have established new pathways for integrating international climate obligations into national legal processes. As environmental awareness increases and judicial activism strengthens, international law is likely to assume an increasingly central role in shaping Nigeria's climate litigation landscape.

Judicial Approaches to Climate Litigation in Kenya and Nigeria

Kenya and Nigeria, two major African jurisdictions with common law heritage, have adopted divergent judicial approaches to climate litigation, shaped by differences in their constitutional frameworks, statutory structures, and judicial philosophies. While Kenyan courts have developed an increasingly robust and rights-based jurisprudence in environmental and climate matters, Nigerian courts remain more cautious and constrained, particularly due to constitutional limitations and procedural barriers. This section provides a comparative analysis highlighting these distinctions and their implications for climate justice.

The Human Rights Approach to Climate Litigation in Kenya and Nigeria

Kenya's 2010 Constitution represents one of the most progressive constitutional frameworks in Africa regarding environmental protection and climate justice. Article 42 of the Constitution guarantees every person the right to a clean and healthy environment, including the right to have that environment protected for the benefit of present and future generations. This right is not merely aspirational; it is a substantive and enforceable constitutional entitlement. The provision establishes a foundation for climate and environmental litigation by recognising environmental quality as integral to the dignity, health, and well-being of individuals and communities. Applying these constitutional provisions enables an individual to sue any public or private entity on the grounds of the human right to a clean environment in Kenya. The courts in Kenya have acted in several cases, recognising that environmental degradation poses a threat to the enjoyment of the human right to life, and have urged courts to take into account the impact of climate change in this regard (Omuko-jung, 2021).

The enforcement mechanism for this right is detailed under Article 70, which provides that if a person alleges that their environmental rights under Article 42 have been violated or are likely to be violated, they may apply to a court for redress. The court is empowered to issue orders preventing, stopping, or discontinuing acts or omissions harmful to the environment, as well as compelling public officers to take appropriate protective measures. Importantly, Article 70 does not require a petitioner to demonstrate personal injury or direct interest, thereby significantly lowering the threshold for standing in environmental and climate matters. This broad-standing provision is further reinforced by Articles 22 and 258, which allow any person, acting in the public interest, or on behalf of another who cannot act in their own name, to institute proceedings for the enforcement of constitutional rights. These provisions institutionalize public interest litigation, empowering civil society organizations, community groups, and individuals to bring claims not just for their own benefit but in the interest of broader environmental protection and climate action.

In practice, Kenyan courts have interpreted these provisions to create a robust platform for climate litigation, treating environmental harm and climate impacts as violations of constitutional rights. This has enabled the judiciary to play an active oversight role over both public authorities and private actors whose actions may contribute to environmental degradation or climate harm. In landmark cases such as *Mohammed Hussein Khalid v County Government of Garissa & 2 Others* and *Save Lamu & 5 Others v NEMA & Another*, the courts have issued rulings enforcing environmental rights, sometimes relying on international climate principles like sustainable development, intergenerational equity, and the precautionary principle, all of which are grounded in the Constitution's values and Kenya's monist legal approach. Thus, Kenya's constitutional framework not only guarantees environmental rights but also institutionalizes access to justice for climate-related grievances, making the judiciary a central actor in the country's climate governance architecture.

United Kingdom

Climate change litigation has emerged as a vital legal tool for enforcing environmental obligations, shaping state policy, and holding public and private actors accountable for their contributions to climate harm. While the global nature of climate change necessitates collective responses, how domestic legal systems engage with climate-related claims varies considerably, shaped by constitutional design, institutional capacity, legal culture, and socio-economic context. This section undertakes a comparative analysis of climate change litigation in Nigeria and the United Kingdom, two countries with shared common law traditions but divergent legal trajectories, environmental challenges, and judicial approaches to climate accountability. The United Kingdom, as a developed economy and historical greenhouse gas emitter, has been at the forefront of climate governance, enacting early climate legislation such as the Climate Change Act 2008, and developing a robust jurisprudence on governmental accountability in climate matters. It offers a model of institutionalised climate litigation supported by well-established administrative law doctrines and a politically responsive judiciary.

Nigeria, on the other hand, represents a developing country context, characterised by acute vulnerability to climate impacts, significant dependence on natural resources, and a constitutional framework that constrains the direct enforcement of environmental rights. Nigerian climate litigation often relies on broader environmental laws, international treaties (such as the African Charter on Human and Peoples' Rights), and strategic public interest litigation to seek redress for climate-related harms. By examining both jurisdictions, this analysis highlights the structural, doctrinal, and normative factors that shape climate litigation outcomes. It interrogates the influence of international law, the role of rights-based frameworks, and the scope of judicial review. The aim is to assess the extent to which courts in both contexts contribute to climate governance, facilitate environmental justice, and uphold international and domestic climate commitments. This comparative inquiry not only reveals key contrasts in legal and institutional design but also underscores shared challenges and transferable lessons for climate litigation in both the Global North and South.

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Legal Framework for Climate Litigation in The United Kingdom

The legal framework for climate change litigation in the United Kingdom (UK) is characterized by a combination of statutory instruments, common law principles, international commitments, and policy frameworks. Although the UK does not have a codified constitution, its legal system offers multiple avenues through which climate-related claims can be presented before the courts. This framework reflects both the UK's commitment to climate governance and the growing role of courts in enforcing environmental and climate obligations.

The United Kingdom Climate Change Act 2008

The Climate Change Act 2008 is not just a legislative measure; it represents the backbone of the United Kingdom's vigorous fight against climate change. This pivotal Act mandates a crucial reduction in carbon dioxide and other harmful greenhouse gas emissions, while actively promoting strategies to adapt to the ever-growing risks brought on by climate change. Furthermore, the Act establishes a robust framework for implementing these essential objectives, showcasing the UK's unwavering commitment to leading the change in urgent international climate action. By embracing this Act, the UK not only safeguards its environment but sets an inspiring example for the world to follow in the battle against a looming crisis (Daudu, 2024). The Climate Change Act can be said to serve two main functions, which outline its aims and provide a clearer understanding of the targets the legal document seeks to accomplish in climate action. They are:

i. Mitigation of greenhouse gas emissions and
ii. Adaptation to climate change in the United Kingdom

Mitigation of Greenhouse Gas Emissions

According to the act's targeted greenhouse gases, which are to be reduced over time as part of an economy-wide decarbonisation transition, this relates to the mitigation theme of the Climate Change Act. Similar to the Kyoto Protocol and the Paris Agreement, the same seven types of greenhouse gases are subject to regulations in the United Kingdom (Muinzer,2024). These gasses include: (i) carbon dioxide, (ii) methane (iii) nitrous oxide, (iv) hydrofluorocarbons, (v) perfluorocarbons, (vi) sulphur hexafluoride, and (vii) any other greenhouse gas designated as a targeted greenhouse gas by an order made by the Secretary of State (Climate Change Act, 2006). Emissions of a specifically designated gas can be defined as emissions of that gas into the atmosphere that are attributable to human actions. These are calculated or measured in tonnes of carbon dioxide equivalent. The Secretary of State has the power to make amendments to the list of targeted gases by including an additional gas to the gases listed in that definition if it is deemed necessary by a European or international agreement or arrangement that acknowledges a different gas contributes to climate change.[9]

In 2023, this authority was utilized for the first time when legal action was threatened by the Scottish Climate Emergency Legal Network because the exclusion of nitrogen

[9] Climate Change Act, 2006

trifluoride (NF3) from the list was considered objectionable from a scientific and legal standpoint. The gas was added to the list when the Secretary of State made an amendment. The most significant substantive obligations under the Act are long-term, legally enforceable emission reduction goals for the entire economy that the UK government must meet. For 2050, the 1990 baseline emission reduction target is set at 100%, while for 2020, the target is set at 34%. The 2020 goal was accomplished before the deadline. The territorial CO_2 emissions of the United Kingdom fell by 49.7% between 1990 and 2020 (UK Government, 2021)

The 2020 and 2050 goals have been considered as milestone goals because of their significance to climate action in the United Kingdom. The 2020 targets stayed at 26% briefly, whereas the 2050 target remained around 80% for a longer period of time. Following the Act's enactment in 2008, the 2020 targets were quickly increased upward to 34% in 2009. However, along the line, after much pressure on the government in court to force an increase, the 2050 goal was raised to 100% or "Net Zero". In *Plan B Earth & Ors, R (on the application of) v. Secretary of State for Business, Energy and Industrial Strategy* (2018) Although the lawsuit was unsuccessful, it raised awareness of the 2050 goal among the public and politicians and helped to push for an upward adjustment in light of the Paris Agreement and related global events since the Act was established. This happened in 2019 when the goal was amended.[10]

It is the duty of the Secretary of State to ensure that the emission reduction target is achieved under the United Kingdom Climate Change Act 2008, and since such target requirements were rarely found in an Act of Parliament stated in absolute terms without any limitations, the creation of this substantive responsibility was extremely unique in the framework of UK law. Hence, these goal requirements have established themselves as a cornerstone of UK climate change legislation (Reid, 2012). In addition to the responsibility of the Secretary of State to ensure the emissions targets are achieved, the Secretary of State has the power to change the targets through secondary legislation. However, this authority is limited because the legislation stipulates that major advancements in climate change science or international or European law or policy must serve as the foundation for such changes[11]. The carbon budget is implemented throughout a series of five-year intervals. A certain amount of carbon units is credited to the UK's carbon account for each period, made possible by the Act, which caps emissions at a predetermined level.[12].

Ultimately, the powers of the Secretary of State to make any amendment to the emissions target are subject to democratic constraints. Before the Secretary of State can make any amendments, the Secretary of State must consider several specific factors. These include, but are not limited to, scientific understanding of climate change; fiscal and economic conditions; conditions at the European and global levels; and the recommendations that the Committee on Climate Change (CCC) is mandated by the Act to offer (Church, 2015). The Committee on Climate Change (CCC) is established in Part 2 of CCA 2008. This body, which is independent of the UK government, provides professional reports and advice. It is obligated to report on UK climate progress and

[10] Climate Change Act, 2008
[11] Climate Change Act, 2008
[12] Climate Change Act, 2008

provide mitigation and adaptation advice to the UK parliament, the Secretary of State, and the country's devolved institutions, among other significant procedural tasks[13]. Carbon budgets are established and modified by order, pending a resolution of both houses of Parliament. Should the Secretary of State's carbon budget deviate from the Committee on Climate Change recommendation, he is required to release a statement explaining the differences. When considering public accountability, this condition is crucial. It is also significant from a legal standpoint since the Secretary of State's justifications might be challenged in court through judicial review.

Adaptation to Climate Change in the United Kingdom

The 2008 Climate Change Act created a new set of laws about adaptation. A Climate Change Risk Assessment (CCRA) was mandated by the Act to evaluate the risks of current and anticipated climate change impacts on the United Kingdom. This was followed by an agreement to provide the first risk assessment to Parliament by the end of 2011, with a continuous legislative requirement to repeat the procedure every five years. Additionally, the Act created an independent organisation called the Committee on Climate Change (CCC) and stipulated that before presenting its findings to Parliament, the CCRA must consider the recommendations of the CCC Adaptation Sub-Committee (ASC) (Warren *et al*., 2014). The Act also mandates that the Secretary of State provide a National Adaptation Program (NAP) to Parliament. This must outline the UK Government's adaptation goals, along with plans and policies (as well as timelines) to achieve them. It should also show how the risks identified in the CCRA study will be handled in policy. Annually, the ASC reviews the NAP. Given that the CCRA was both political and technical, its legal background is crucial (Warren *et al*., 2014).

Judicial Approach to Climate Change Litigation in The United Kingdom and Nigeria

The judiciary in the United Kingdom has emerged as a critical actor in the enforcement and interpretation of climate change obligations, particularly in the context of the *Climate Change Act 2008* (CCA) and wider environmental governance frameworks. While climate policy is often regarded as the preserve of the executive and legislative branches, judicial oversight ensures that government action remains consistent with statutory duties, constitutional principles, and international commitments. Litigation serves as a vital tool for accountability, providing claimants with avenues to challenge inadequacies in climate-related decision-making, especially where political will falters or statutory requirements are insufficiently implemented. The judiciary plays an indispensable role in shaping the trajectory of climate governance, particularly where executive and legislative action falls short of meeting pressing climate obligations. While the United Kingdom and Nigeria share a common law heritage, their judicial approaches to climate change litigation diverge significantly, reflecting differences in statutory frameworks, constitutional provisions, and institutional capacity. A useful point of entry into this comparison is the means of commencement of climate-related actions, which reveals the distinct procedural gateways through which litigants seek judicial oversight in both jurisdictions (Setzer and Higham, 2021).

[13] Climate Change Act, 2008

In the United Kingdom, enforcement challenges in climate litigation stem largely from the limited scope of judicial remedies rather than access to courts. Although courts readily review climate-related decisions through judicial review, relief is typically procedural, with declaratory or quashing orders that secure formal compliance without necessarily altering substantive policy outcomes. Implementation, therefore, often results in corrected processes rather than stronger climate action, while regulatory bodies may face political and institutional pressures that constrain enforcement ambition[14] (Setzer and Higham, 2021). To strengthen UK climate litigation, remedies should go beyond procedural orders to include supervisory mechanisms that ensure meaningful compliance. Enhancing the technical capacity and independence of regulators, alongside transparent monitoring and citizen oversight, would mitigate risks of political or institutional interference. Strategic use of statutory instruments such as the Climate Change Act 2008, complemented by post-judgment follow-up mechanisms, would help translate judicial victories into tangible climate outcomes.

a. Judicial Review

In the UK, climate litigation has predominantly been pursued through judicial review proceedings. Governed by *Part 54 of the Civil Procedure Rules*, judicial review enables courts to examine the legality, rationality, and procedural propriety of decisions made by public authorities. The enactment of the *Climate Change Act 2008 (CCA)* significantly enhanced the justiciability of climate claims by imposing binding duties on the Secretary of State, including the establishment of carbon budgets and the achievement of net-zero emissions by 2050. These statutory duties have provided fertile ground for litigation. In *R (Friends of the Earth and Others) v Secretary of State for Business, Energy and Industrial Strategy*, the High Court found that the Net Zero Strategy failed to comply with section 14 of the CCA, rendering it unlawful for want of sufficient information and transparency in demonstrating how statutory carbon budgets would be achieved *as in(Friends of the Earth and Others) v Secretary of State for Business, Energy and Industrial Strategy* (2022) EWHC 1841.

Similarly, following the 2015 signing of the Paris Agreement, eleven claimants and the charity Plan B Earth sued the UK government in 2017 for failing to update its 2050 carbon goal under the Climate Change Act (2008). The main argument of the Plan B case centred on the state's obligation to revise mitigation targets in the United Kingdom under the Climate Change Act 2008. The CCA required the UK to make sure that its net UK carbon account by 2050 was at least 80% lower than the baseline from 1990 to 2050. However, if it seems that there are significant developments in scientific understanding or in European or international law or policy, the Secretary of State may use this authority to change the 2050. The Secretary of State must consider the recommendations of the Committee on Climate Change, an impartial body made up of experts and created under the CCA, before using this authority[15]. The Secretary of State conferred with the Committee following the signing of the Paris Agreement. The Committee recommended against changing the goal at this time. The Committee specifically stated that the current 2050 target was already going beyond what was practical, that the government had stated

[14] On the application of *Plan B Earth* v Secretary of State for Transport, 2020
[15] Climate Change Act, 2008

that it did plan to set a net-zero target at some point, and that the Committee believes it is too early to do so at this time, but that it should be reviewed. Furthermore, it was suggested that the change should be delayed until it becomes necessary to (or forced to) scale up to net zero and focus on shorter-term goals under an 80% GHG reduction by 2050[16]Accordingly, the 2050 Target was not changed by the Secretary of State. The claimants contested this decision in court, along with the Committee's recommendations (Ohdedar and McNab, 2021).

In their application to the High Court, the claimants cited five reasons to support their claim. they argued that the Secretary should have updated the target in accordance with the CCA 2008's legislative intent, together with arguments based on human rights legislation. The High Court denied permission for the lawsuit to proceed after rejecting all of these, stating that the allegations were not debatable. On appeal, the claimant was still not successful (Ohdedar and McNab, 2021). According to the High Court, the Secretary of State was right to conclude that the UK is not subject to any legally binding targets under the Paris Agreement. In line with accepted scientific knowledge and international consensus, the claimants contended that the CCA 2008's actual goal was to obligate the UK to make a fair contribution to the global climate obligations. For this reason, the Secretary of State ought to have modified the 2050 Target. The Secretary of State was given discretion in this matter, according to the High Court, which disagreed and determined that CCA 2008 did not require the Secretary to change the target (Ohdedar and McNab, 2021). The court concluded that, in line with the CCC recommendations, the decision of the Secretary of State not to update the emissions target is not contrary to the Climate Change Act 2008 since legislative procedure was followed and hence the case was not successful (Ohdedar and McNab, 2021).

Unlike the United Kingdom, where judicial review under the *Civil Procedure Rules* operates as the principal vehicle for climate litigation, the Nigerian system reflects a far narrower scope for judicial review in environmental and climate-related disputes. While Nigerian administrative law formally recognises judicial review of administrative action, climate cases have rarely been pursued through this avenue. Instead, most claimants have relied on fundamental rights enforcement proceedings or public interest litigation under constitutional and human rights frameworks, rather than traditional administrative law remedies (Abbiba and Woha, 2024). The restrictive character of Nigerian judicial review is traceable to the country's colonial legal inheritance and the historically conservative approach of courts to questions of locus standi. Before the adoption of the *Fundamental Rights (Enforcement Procedure) Rules 2009*, standing in Nigeria was interpreted narrowly, requiring claimants to show a direct personal interest in the subject matter. This approach hindered the ability of environmental groups and affected communities to challenge administrative decisions with climate or environmental implications. Judicial review, while theoretically available to challenge ultra vires or procedurally defective government action, has therefore remained underdeveloped as a mechanism of climate governance in Nigeria. Nigerian courts have tended to treat environmental and climate-related decisions as falling within the discretionary powers of the executive, and thus not readily subject to judicial interference. For example, in disputes over Environmental Impact Assessments under the *Environmental Impact Assessment Act (1992)*, courts

[16] Climate Change Act, 2008

have been reluctant to annul or quash governmental approvals for extractive projects on grounds of procedural irregularities, preferring instead to frame judicial intervention through the language of rights violations. This contrasts sharply with the UK's more robust deployment of judicial review to enforce statutory duties under the *Climate Change Act (2008)*.

Consequently, Nigerian climate litigation has gravitated towards the rights-based approach exemplified by *Gbemre v Shell Petroleum Development Company*, where the Federal High Court framed gas flaring as a violation of the constitutional rights to life and dignity, rather than scrutinising the administrative validity of government licences or approvals. Similarly, NGOs such as the Social and Economic Rights Action Centre (SERAP) have pursued claims before both domestic and regional fora by grounding actions in fundamental rights rather than administrative law. This judicial posture demonstrates that while Nigeria possesses the doctrinal tools for judicial review, they have not been systematically developed or applied in the context of climate change. Instead, the courts have embraced a broader human rights lens as the primary judicial approach. In comparative perspective, therefore, the UK model represents a statute-driven review of governmental compliance with carbon budgets and climate strategies, whereas the Nigerian model is rights-driven, with judicial review playing only a peripheral role in climate-related adjudication.

Human Rights Approach in the United Kingdom and Nigeria

The intersection of climate change and human rights has emerged as a powerful avenue for litigation, offering claimants a normative framework that extends beyond statutory compliance to encompass fundamental values of life, dignity, and environmental integrity. Across jurisdictions, courts have been called upon to recognise climate change not merely as an environmental or policy issue but as a direct threat to the enjoyment of constitutionally and internationally protected rights. This human rights approach has proven particularly salient in contexts where legislative frameworks are either underdeveloped or inadequately enforced, allowing litigants to reframe climate grievances in terms of legally enforceable entitlements.

In the United Kingdom, the role of human rights in climate action has been shaped primarily by the interpretive reach of the *Human Rights Act 1998* (HRA), which incorporates the *European Convention on Human Rights* (ECHR) into domestic law. Although the UK's climate governance is largely statute-driven through the *Climate Change Act of 2008 (CCA),* claimants have increasingly sought to frame government inaction or inadequate policies as violations of fundamental rights protected under the ECHR. Particularly, Articles 2 (right to life) and 8 (right to private and family life) have been invoked to argue that the failure to prevent the dangers climate change poses to human health, livelihoods, and the enjoyment of family and home life. While courts have been cautious in recognising such claims, often emphasising the separation of powers and the political nature of climate policymaking, the human rights framework nevertheless provides a supplementary basis for climate litigation. It reinforces the view that climate change is not merely an environmental concern but also a human rights issue with direct implications for individual dignity and state accountability.

It is important to note that the UK constitution does not expressly provide for climate rights or environmental rights, just like the Nigerian constitution has not recognized the right to environment in the environment (Guruparan and Moyihan, 2021). This has proven to be a major challenge in the aspect of the rights-based approach to climate litigation in the UK, hence the need to explore other pathways, such as judicial review in the United Kingdom for climate change litigation. There are several other obstacles to rights-based climate change litigation, such as proving a causal connection between a government's inaction on climate change and its effects on human rights (causation), determining whether a court has the power to decide on a claim regarding executive decisions on climate change (justiciability), and determining who is eligible to file a case in court (legal standing) (Guruparan and Moyihan, 2021). An example of the challenges of a rights-based approach to climate change litigation in the UK can be seen in the case of Plan B. The claimant alleged violations of the rights to life, property protection, and respect for one's private and family life. According to the argument, the human rights of the Claimants and others would be violated if the Secretary of State refuses to amend the 2050 target, which may infringe the rights of the claimants in this case (Ohdedar and McNab, 2021).

Although the claim was rejected by the High Court, because the Secretary of State has significant authority to weigh the benefits and drawbacks of any course of action in this area, the court thought that the Secretary of State did not make a bad judgment. The human rights approach in this case was therefore unsuccessful. Even while the Court of Appeal acknowledged the connection between human rights and the environment, it maintained the High Court's ruling that there was no chance of success on human rights grounds in an appeal because there was no legal mistake. Arguments based on human rights were obviously encouraged by the favourable decision in Urgenda and other international cases involving the application of human rights. The Statement of Facts illustrates the international scope of climate litigation by referencing the Urgenda ruling, among other cases. Meanwhile, under section 6 of the Human Rights Act, the Plan B v. BEIS case serves as an example of the limitations associated with UK climate and human rights lawsuits. The European Convention on Human Rights (ECHR) provides that public authorities must not engage in acts that may infringe on particular freedoms and rights, including the right to life of individuals. Therefore, a connection was being drawn between the possible violations of the right to life and other human rights and the Secretary's decision not to amend the 2050 Target in accordance with international policy and research. Nevertheless, the Court indicated that the executive had wide discretion to choose its course of action and only considered whether the choice was illegal. The Court did not address whether human rights would be violated as a result of the decision to maintain the target as it is (Ohdedar and McNab, 2021).

By contrast, the nature of the system of climate legislation in Nigeria has made human rights claims the principal mode of climate-related litigation. Courts have been urged to interpret the rights to life and dignity under sections 33 and 34 of the 1999 Constitution (as amended) to encompass environmental and climatic harms. Landmark cases such as *Gbemre v Shell Petroleum Development Company* and *Centre for Oil Pollution v NNPC* demonstrate how rights-based reasoning has enabled judicial intervention against environmentally destructive practices, even in the face of weak regulatory enforcement. The domestication of the *African Charter on Human and Peoples' Rights* further

reinforces this approach, offering an additional layer of rights-based protection through Article 24, which guarantees the right to a satisfactory environment. There is an evident lack of willingness on the part of the court to engage in extensive examination of the emissions target in the United Kingdom, which shows that, for now, the Urgenda case has proven to be an exception, and much needs to be done as regards the use of a rights-based approach in climate litigation in the UK. However, it is demonstrated by Heathrow Airport and other instances that rights-based arguments will continue to gain traction in UK climate litigation.

Tort-based Approach to Climate Litigation in the UK and Nigeria

The common law of tort has a historical significance in climate change litigation in the UK, earning it the name 'Holy grail' cases among scholars and practitioners (Bower, 2021). Tort-based climate claims typically involve holding defendants responsible for harm linked to their contribution to climate change. Such claims may take different forms, from ambitious suits seeking compensation for widespread climate loss and damage to systemic actions demanding greater emissions reduction efforts, and more conventional tort cases. Yet, the traditional principles of private law are ill-equipped to address the complex, global nature of climate harm. Consequently, the likelihood of success for expansive or systemic tort claims in the UK remains poor, as tort law provides limited tools for tackling such broad environmental challenges (Bouwer, 2024). Numerous challenges hinder climate change–related tort claims under English law. These include difficulties in proving that a duty of care exists and that it has been breached, challenges in establishing causation due to the widespread and cumulative nature of climate impacts, and the restrictive interpretation of what constitutes legally recognisable damage (Hinteregger, 2017).

A central difficulty in tort-based climate litigation lies in proving causation (Minnerop and Otto, 2020). That is, demonstrating a sufficient causal link between a defendant's actions and the harm suffered. Although scientific evidence strongly supports a connection between rising greenhouse gas emissions and the increasing frequency and intensity of extreme weather events, attributing a specific portion of that harm to an individual emitter remains problematic. This is because climate change results from the cumulative effect of emissions from numerous, geographically dispersed sources, making the causal chain indirect and diffuse. Consequently, claimants struggle to show that one defendant's conduct materially contributed to their losses. However, advances in climate attribution science are beginning to strengthen causal arguments by quantifying the extent to which specific emissions contribute to particular climate impacts. This emerging evidence could enhance the prospects of meeting causation requirements in tort law, potentially paving the way for successful climate-related claims in the future (Friederike *et al*., 2022).

The concept of duty of care raises similar challenges to those involved in proving causation. A duty of care refers to the legal responsibility to act with reasonable caution to prevent harm. However, because climate change has a diffuse and widespread nature, and there is often limited proximity between the alleged wrongdoer (the emitter) and the affected claimant, it can be challenging to demonstrate that a specific defendant owed such a duty of care, or that any such duty was breached (Hart and Llyod, 2022). The final

major challenge in pursuing climate-related claims under tort law stems from the unique nature of climate change harm. The simple act of emitting greenhouse gases and the resulting rise in global temperatures do not, in themselves, amount to legally recognized damage. In tort law, harm is only acknowledged when these events cause adverse effects on individuals (such as personal injury) or on property. Moreover, some jurisdictions, including the United Kingdom, are generally hesitant to award compensation for anticipated or future economic losses (Hinteregger, 2017).

Similarly, in Nigerian courts, pursuing tort-based environmental claims has proven challenging for litigants. For instance, in *Shell Petroleum Development Company v. Farah*, the court required proof of direct harm to property before awarding damages. Also, in *SPDC v. Otoko*, the claimant had to prove that the defendant's act directly caused the damage. For this reason, the tort approach has been very challenging in both jurisdictions, even though it remains highly relevant. However, in recent years, UK tort litigation has witnessed a significant shift towards holding parent companies accountable for environmental harms caused by their foreign subsidiaries. A landmark development is the *Okpabi and Others v Royal Dutch Shell Plc* (2021), UKSC 3 decision, where the UK Supreme Court held that it was arguable that Shell's parent company owed a duty of care to Nigerian communities affected by oil pollution. The Court emphasised that parent liability could arise where the parent company exercises significant control over, or assumes responsibility for, the operations of its subsidiaries. This decision aligns with the earlier case of *Vedanta Resources Plc v Lungowe* (2021) UKSC 3, which recognised the possibility of parent-company liability for overseas environmental damage. These rulings have encouraged claimants to use the UK courts as a forum for transnational tort claims against multinational corporations, particularly where local remedies are ineffective. Consequently, while success on the merits remains inconclusive as cases are still ongoing in the courts, the trend indicates a growing judicial willingness to scrutinise corporate group structures and extend traditional tort principles to reflect modern patterns of corporate governance and global environmental responsibility.

Conclusion

Climate change litigation has become an indispensable component of environmental governance, offering a legal avenue for enforcing climate obligations, promoting accountability, and advancing environmental justice. The comparative analysis of Kenya and Nigeria reveals two distinct but instructive trajectories in the evolution of climate-related adjudication in Africa. Kenya stands out for its robust constitutional foundation, explicit environmental rights, and strong procedural mechanisms that empower individuals and communities to seek judicial redress. Anchored in the transformative Constitution of 2010, complemented by the Climate Change Act 2016 and the Environmental Management and Coordination Act (EMCA), Kenya's legal architecture provides expansive standing, clear institutional responsibilities, and a judiciary willing to integrate both domestic and international climate norms. This has enabled the emergence of a vibrant climate litigation landscape that not only challenges unsustainable development but also strengthens public participation, transparency, and intergenerational equity.

In contrast, Nigeria's framework, while evolving, remains constrained by structural and doctrinal limitations. The absence of a justiciable constitutional right to a clean and healthy environment, coupled with the non-justiciability of environmental provisions under Chapter II, significantly narrows the opportunities for direct climate litigation. Although the Climate Change Act 2021 marks an important step toward institutionalising climate governance, its limited enforceability, lack of explicit standing provisions, and weak integration with environmental statutes such as the NESREA Act restrict its transformative potential. Nigerian litigants therefore rely heavily on creative judicial interpretations, the domesticated African Charter, and human rights frameworks to address climate-related harms—approaches that, while promising, remain insufficient to fully ground climate justice within the domestic legal system.

International law plays a far more dynamic role in Kenya than in Nigeria. Kenya's monist constitutional approach allows international treaties and soft law to be directly invoked in domestic litigation, expanding the scope of judicial reasoning and reinforcing state accountability. Nigerian courts, operating within a dualist structure, have been more cautious, relying mostly on domesticated instruments such as the African Charter, although recent judicial trends show growing openness to using international norms as interpretive tools. The Climate Change Act 2021 has further strengthened Nigeria's linkage to the Paris Agreement and other climate commitments, but the absence of corresponding judicial mechanisms continues to impede practical enforcement. Ultimately, the comparison reveals that Kenya's model offers important lessons for advancing climate justice in Nigeria and across Africa. Strengthening Nigeria's climate litigation framework will require constitutional reform to recognise environmental rights as justiciable, statutory amendments to expand locus standi, and clearer judicial oversight mechanisms within the Climate Change Act. It will also require greater alignment between environmental and climate-specific statutes, improved institutional coordination, and stronger integration of international climate obligations into domestic law.

As the impacts of climate change intensify, litigation will remain a crucial tool for challenging harmful practices, shaping policy, and safeguarding the rights of both present and future generations. Kenya's experience demonstrates that a rights-based, participatory, and internationally informed legal framework can catalyse transformative climate action. Nigeria's ongoing reforms, if reinforced by strategic legal and institutional changes, hold significant promise for developing a more powerful climate litigation culture capable of advancing environmental protection, accountability, and sustainable development across the region.

Overall, the United Kingdom's experience demonstrates both the strengths and inherent constraints of pursuing climate accountability through a highly institutionalised and statute-driven framework. The Climate Change Act 2008 has provided a clear legal architecture for emissions reduction and governmental oversight, yet the full potential of this framework depends on continued judicial willingness to interrogate executive discretion and demand transparency in climate-related decision-making. At the same time, the limited success of rights-based and tort-based claims reveals ongoing doctrinal barriers that restrict the courts' ability to address the diffuse, multi-actor nature of climate harm. Nevertheless, recent developments, including the rise of attribution science, the increasing use of judicial review to challenge government strategies, and the

growing acceptance of parent-company liability in transnational tort claims, signal a gradual but meaningful evolution in the UK's judicial approach. These trends suggest that UK courts are beginning to adapt traditional legal doctrines to the complex realities of climate governance, thereby reinforcing the judiciary's vital role as a check on governmental and corporate conduct in the era of escalating climate risks.

Future research could build on this comparative analysis by empirically mapping climate litigation across Nigeria, the UK, and similar jurisdictions to capture procedural pathways, plaintiffs, and outcomes. Studies could also assess the effectiveness of judicial remedies in achieving tangible climate results and explore how civil society actors influence access to justice and litigation strategies. Comparative investigations into enforcement mechanisms, including the role of regulatory capacity, independent oversight, and political pressures, would help identify practical barriers to implementation. Additional research might examine corporate accountability in high-impact sectors, the practical use of international and regional law in domestic courts, and the gendered and social equity dimensions of climate litigation. Finally, longitudinal analyses of jurisprudence could reveal evolving doctrines and gaps between judicial pronouncements and policy implementation, providing a more robust understanding of the judiciary's role in advancing climate governance.

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